IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7678, 7679, 8397,
8399 and 8410 of 1993
(Five matters)

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDRAKANT VADILAL PATEL

Versus

HEIRS OF DECD.MANIBHAI KILABHAI

Appearance:
MR KM PARIKH for Petitioner No. 1-4
NOTICE SERVED for Respondent No. 1
RULE SERVED for Respondent No. 1/1-1/4
MR SP SEN, AGP for respondent No. 2 in SCA Nos. 7679, 8397, 8399, 8410 of 1993.
MR HC PATEL, AGP for Respondent No. 2 in SCA No.7678/93

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 02/04/2002

COMMON ORAL JUDGEMENT

These petitions under Articles 226 and 227 of the Constitution challenge the common judgment and order

dated 4.11.1992 passed by the Gujarat Revenue Tribunal in Revision Application Nos. TEN.B.A. 322 to 326 of 1988 under Section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948.

2. In view of the order that is proposed to be passed, it is not necessary to set out all the facts in detail. Suffice it to state that the petitioners herein purchased agricultural lands by registered sale deeds in their favour between July and October, 1980. The lands in question are situate in village Varnama in Taluka & District Vadodara. The revenue entries were certified in the same year. The Mamlatdar & ALT initiated proceedings under Section 84C of the Act in 1984 and held the transfers to be invalid on the ground that the purchasers did not have agricultural lands on the date of purchase. The petitioners carried the matter in appeal before the Deputy Collector, Baroda who allowed the appeals and remanded the matters to the Mamlatdar & ALT for de novo enquiry. After the said order of remand for the de novo enquiry, the Mamlatdar & ALT passed the order in 1987 that in view of the evidence produced before him, the petitioners were agriculturists within the meaning of the Tenancy Act and, therefore, dropped the proceedings. The Deputy Collector took the matters in suo motu revision under Section 76A of the Act and by orders passed in January, 1988, the Deputy Collector allowed the revision applications and set aside the orders passed by the Mamlatdar & ALT and remanded the matters back to the said authority. Being aggrieved by the said orders, the petitioners preferred above numbered revision applications before the Tribunal which ultimately dismissed the revision applications on the ground that the Deputy Collector had merely passed an order of remand and that, therefore, the Tribunal was not required to interfere with the same. While admitting these petitions, this Court granted ad-interim stay of the proceedings and also stay regarding possession.

3. At the hearing of these petitions, Mr KM Parikh, learned counsel for the petitioners has submitted that in view of the intervening legislative amendments to the provisions of the Tenancy Act, the proceedings under Section 84C of the Tenancy Act have abated and, therefore, the petitions are required to be disposed of in terms of the said declaration.

Mr KM Parikh has further submitted that the initiation of proceedings under Section 84C itself was illegal because the proceedings were initiated beyond a reasonable time of one year as laid down by this Court in

Gujarat Khet Kamdar Union vs. State of Gujarat, 1999(3) GLR 2044.

4. Mr SP Sen and Mr HC Patel, learned AGPs appearing for the respondent-authorities, however, submitted that the proceedings under Section 84C of the Tenancy Act would abate only where initiation of proceedings was on the ground of violation of the provisions of Section 63 read with Sections 2(2) and 2(6) of the Tenancy Act, but where the provisions of Section 2(6) were not involved, there can be no question of abatement. It is submitted that in the instant case, there was no controversy about the provisions of Section 2(6) of the Act, but the basic question was whether the petitioners did hold any agricultural land on the date of purchase of the lands in question in the year 1980.

5. As far as the question of delay in initiation of proceedings under Section 84C of the Act is concerned, the learned AGPs submit that the Tribunal has given a finding that initiation of proceedings was within a reasonable time and, therefore, that issue should be treated as concluded.

6. Having heard the learned counsel for the parties, it appears to the Court that it is true that while passing the orders of remand, the Deputy Collector as well as the Tribunal did observe that if the petitioners show holding of another agricultural land, it would be necessary for the Mamlatdar & ALT to make further enquiry whether the original agricultural holding of the petitioners was within 8 kms. from the lands in question or within 15 kms. from the petitioners' residence. It appears to the Court that to this extent, the enquiry ordered by the Deputy Collector and the Tribunal would no longer be required, in view of the amendments to the provisions of Section 2(6) of the Act by Gujarat Acts No. 4 of 1995 and 3 of 2001. The question would, still however, survive whether the petitioners did hold any agricultural land on the date of purchasing their respective lands. In other words, the fact finding authority i.e. the Mamlatdar & ALT is still required to consider the question whether the petitioners were agriculturists within the meaning of the amended Tenancy Act when they purchased the lands in question, but if the petitioners are found to be agriculturists, the Mamlatdar & ALT is not required to consider whether the distance between the lands in question is 8 kms. or more or the question whether the lands purchased are within a distance of 15 kms. from the residence of the petitioners.

7. As far as the contention about delay in initiation of proceedings under Section 84C of the Act is concerned, it is required to be noted that while the Tribunal did hold that initiation of proceedings was within a reasonable time, in view of the decision of a learned Single Judge of this Court in 1992(1) GLR 13, the Tribunal further noted that there was another line of decisions wherein this Court had taken the view that initiation of proceedings beyond one year or two years cannot be said to be within a reasonable period. This Court does not propose to go into this controversy at this stage except observing that as per the decision of a Division Bench of this Court in Gujarat Khet Kamdar Union vs. State of Gujarat, 1999(3) GLR 2044, proceedings under Section 84C of the Act are expected to be initiated within one year from the date of certification of the entry in village Form No. 6 and that the one year period is merely a guideline and, therefore, it is open to the authorities to justify the delay in initiation of proceedings beyond one year in which case the burden would be on the authorities to show that there was no unreasonable delay in initiation of proceedings. It would, therefore, be open to the parties to refer to and rely upon the principles laid down by this Court in the aforesaid decision. This Court does not propose to express any opinion on the question at this stage and the question is, therefore, left open.

8. Subject to the aforesaid clarification, the petitions are disposed of with a direction that the Mamlatdar & ALT shall decide the matter after giving the petitioners a reasonable opportunity of being heard. It is obvious that the petitioners will be at liberty to produce such other and further evidence including documentary and oral evidence as they may desire to lead in support of their case that they were agriculturists on the date of purchase as per the provisions of the amended Tenancy Act.

9. Subject to the clarification given in para 6 of this judgment, Rule is discharged with no order as to costs.

10. The learned counsel for the petitioners prays that the interim relief which was granted during pendency of these petitions may be continued till the Mamlatdar & ALT decides the proceedings.

The prayer is misconceived. The order of the Deputy Collector in appeal as confirmed by the Tribunal

is one of remainding the proceedings under Section 84C of the Act to the Mamlatdar & ALT. As on today, there is no order adverse to the petitioners. Hence, it is directed that the petitioners' possession of the land in question shall not be disturbed during pendency of the proceedings before the Mamlatdar & ALT, Baroda.

(M.S. Shah, J.)

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